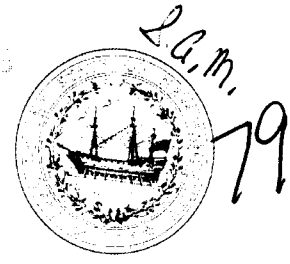




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Clark B. Freise, Assistant Commissioner



March 31, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to award a Brownfields Revolving Loan Fund (RLF) cleanup grant to the City of Somersworth (VC #177476-B001) in the amount of \$178,000 for the cleanup of environmental contamination at the Breton Cleaners property, effective upon Governor and Council approval through December 31, 2017. 100% Federal Funds.

Funding is available in account as follows:

03-44-44-444010-2017-072-500574	<u>FY2017</u>
Dept. Environmental Services, Brownfields RLF Loans, Grants-Federal	\$178,000

EXPLANATION

The Comprehensive Environmental Response, Compensation and Liability Act, as amended, established the Brownfields Revolving Loan Fund (RLF) Program to provide low interest loans to eligible municipalities and private entities, and grants to municipalities and non-profit organizations, for the cleanup of sites contaminated with hazardous substances and petroleum. The availability of cleanup grants has generated increased interest by municipalities and non-profit organizations that are otherwise reluctant to acquire and ultimately cleanup brownfields sites without having in hand the financial resources to address contamination.

The City of Somersworth completed site investigation and cleanup planning for the Breton Cleaners property in 2016. The remedial action plan for the site calls for: 1) the abatement by demolition of asbestos and lead-based paint on the building structures; 2) the removal of containerized hazardous materials and universal waste located within the building; 3) the excavation and off-site disposal of tetrachloroethylene (PCE)- and lead-contaminated soil; and 4) monitored natural attenuation (MNA) of PCE-contaminated groundwater.

The total budget for the overall cleanup project is \$405,000. This grant will cover the abatement by demolition of asbestos and lead-based paint on the building structures, the removal of containerized hazardous materials and universal waste located within the building, and placement of a temporary cap over PCE-impacted soil. The City of Somersworth applied for an EPA Brownfields Cleanup Grant in December 2016 (grant awards to be announced in the spring of 2017). The EPA grant and a 20% cost share provided by the City will cover the cost for the balance of the cleanup project.

The Breton Cleaners property is presently an eyesore located along the Salmon Falls River in downtown Somersworth at the entrance to the City from Berwick, Maine. The City anticipates repurposing the site

as a possible commercial retail / food service property, consistent with its historical use as a commercial property. The property is in such a prime area that the City has been approached by two food/retail establishments interested in redevelopment of the site. Both entities have been hesitant to move forward because of the contamination on site and the cost of cleanup. The City believes that cleanup and redevelopment of the site will bring new tax revenue into the City and spark other redevelopment in the downtown area.

The grant agreement has been approved by the Office of the Attorney General as to form, substance, and execution. In the event that federal funds no longer become available, general funds will not be requested to support this program.

We respectfully request your approval.



Clark B. Freise
Assistant Commissioner

Attachments: Grant Agreement
 Exhibits
 Certificate of Vote/Authority
 Certificate of Insurance

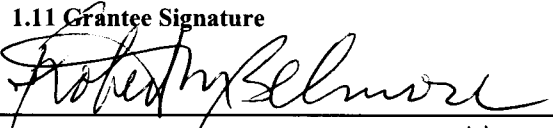
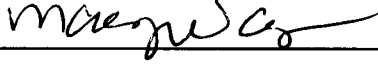

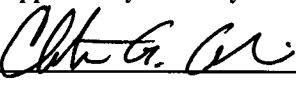
**Subject: City of Somersworth
Brownfields Revolving Loan Fund – Cleanup Grant**

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: City of Somersworth		1.4 Grantee Address One Government Way, Somersworth, NH 03878	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2017	1.7 Audit Date N/A	1.8 Grant Limitation \$178,000.00
1.9 Grant Officer for State Agency Michael McCluskey, Brownfields Program		1.10 State Agency Telephone Number (603) 271-2183	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor ROBERT M. BELMORE, CITY MANAGER	
1.13 Acknowledgment: State of <u>NH</u> , County of <u>Strafford</u> On <u>3/21/17</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace MARGARET J. WAGNER, Notary Public State of New Hampshire My Commission Expires August 26, 2020			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Clark B. Freise, Assistant Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>4/13/2017</u>			
1.17 Approval by the Governor and Council By: _____ On: <u> / /</u>			

2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.**

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional,

affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

- 11.1.1 failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 failure to submit any report required hereunder; or
- 11.1.3 failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 11.2.1 give the Grantee a written notice specifying the Event of

Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

11.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION.

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer of employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any

person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

EXHIBIT A

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

SCOPE OF SERVICES

The City of Somersworth intends to use the grant funds for the remediation of environmental contamination at 1 Winter Street located in Somersworth, New Hampshire.

Grant funds will be used for: 1) abatement by demolition of asbestos and lead-based paint on building structures; 2) the removal of containerized hazardous materials and universal wastes located within the building; and 3) placement of a temporary cap over tetrachloroethylene (PCE) impacted soil.

EXHIBIT B

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

BUDGET AND PAYMENT METHOD

The New Hampshire Department of Environmental Services (the "State") agrees to grant to the City of Somersworth (the "Grantee") the sum of \$178,000 ("Grant Amount") to be used by Grantee only for eligible activities and in compliance with the requirements of CERCLA §104(k).

The Grant Amount shall be payable to Grantee as reimbursement for eligible and allowable expenses incurred by Grantee based upon actual costs incurred for Project work. No reimbursement shall be made to Grantee without written approval of the Department of Environmental Services.

The Grantee may request a maximum of one reimbursement payment per month on forms provided by the State and shall include documentation of Project work completed and the eligible costs incurred by the Grantee.

EXHIBIT C

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

SPECIAL PROVISIONS

1. **Area Covered.**
 - 1.1 The Grantee shall perform the Project on certain real property commonly referred to as Breton Cleaners located in Somersworth, New Hampshire (the "Property"), which property is more particularly described in the Tax Collector's Deed, dated December 19, 2016, recorded at Strafford County Registry of Deeds at book 4443, page 0160.
 - 1.2 The Grantee shall retain ownership of the Property between the Effective Date and the Completion Date. For the purposes of this Agreement, the term "owns" means fee simple title.
2. **Completion of Project.** The Grantee shall commence work on the Project within 180 days of the Effective Date and shall complete and perform all of the work by December 31, 2017 (the "Completion Date").
3. **Environmental Report(s).** The Grantee shall provide the State with a copy of an American Society for Testing and Materials (ASTM) E1527-05 or equivalent Phase I Environmental Site Assessment report for the Property and an ASTM E1903-97 or equivalent Phase II Environmental Site Assessment (i.e., a site investigation that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*) (collectively, the "Assessment"). The Grantee agrees that the grant funds shall not be used for the payment of any cost or expense related to the Assessment.
4. **Project Manager.** The State shall designate an environmental project manager who shall review and approve of the proposed cleanup and coordinate the work to be performed using grant funds. The State's environmental project manager will review the Grantee's remedial planning, design, and engineering documents and review the cleanup activities as they are on-going to ensure that the cleanup is being completed in accordance with all local, State, and Federal requirements and is protective of human health and the environment.
5. **Public Participation.** The Grantee shall prepare a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.
6. **Administrative Record.** The Grantee shall establish an administrative record that includes site investigation reports, remedial action plan, response to public comments, and the remedial action implementation report. The administrative record shall be made available at a location convenient to the public and be available for inspection.

7. **Remedial Action Plan.**

7.1 The Grantee shall prepare an Analysis of Brownfields Cleanup Alternatives/ Remedial Action Plan (ABCA/RAP) that meets the requirements of the New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding, extreme weather events, etc.). The Grantee shall submit copies of the ABCA/RAP to the State for review and approval.

7.2 The Grantee shall make the ABCA/RAP available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice. After the public comment period, the Grantee shall incorporate all appropriate comments, in the reasonable discretion of Grantee, into the ABCA/RAP document and prepare a written response to the public comments, if appropriate.

8. **Remedial Design Plans and Construction Specifications.**

8.1 After the ABCA/RAP has been finalized, the Grantee shall prepare detailed design plans and construction specifications for the Project in accordance with the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*, including a budget and work schedule, and submit same to the State for review and approval.

8.2 If environmental data are to be collected as part of the Project, the Grantee shall develop a Quality Assurance Project Plan in accordance with "EPA-New England, Region 1 - Planning and Documenting Brownfields Projects - Generic Quality Assurance Project Plans, and Site-specific QAPP Addenda," March 2009, and submit same to the State for review and approval.

9. **Remedial Action Implementation Report.** The Grantee shall prepare a Remedial Action Implementation Report that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*. The report shall be submitted to the State for review and approval within ninety (90) days following completion of the Project.

10. **Compliance by Grantee with Laws and Regulations.**

10.1 The Grantee shall use funds only for eligible activities and in compliance with the requirements of CERCLA §104(k) and applicable Federal and State laws and regulations.

10.2 The Grantee shall maintain documentation of how grant funds are used.

10.3 The Grantee shall maintain records for a minimum of three (3) years following completion of the Project financed all or in part with grant funds. The Grantee shall obtain written approval from the State prior to disposing of records. The Grantee shall provide access to records relating to this Agreement to authorized representatives of the Federal government.

10.4 The Grantee shall comply with applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with grant funds must comply with Procurement Standards of 2 CFR 200.317 through 200.326, as applicable.

10.5 The Grantee shall comply with all applicable federal and state laws and requirements. In addition to CERCLA §104(k), federal applicable laws and requirements include: 2 CFR Parts 200 and 1500.

10.6 The Grantee must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to this Exhibit.

10.7 Federal cross-cutting requirements include, but are not limited to, DBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and permits required by Section 404 of the Clean Water Act; Executive Order 11246 Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti-Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

11. **Event of Default.** In addition to the Events of Default specified in Subparagraph 11.1 of the General Provisions, any one or more of the following acts or omissions of the Grantee shall constitute an Event of Default:
- a. The Grantee sells or transfers the Property prior to the Completion Date.
 - b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
12. Subparagraph 17.1.2 of the General Provisions shall be changed to read: “comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$5,000,000 each occurrence and \$5,000,000 general aggregate; and”

Davis Bacon Term and Condition
For
Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB.

With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

- (i) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,
- (ii) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (iii) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if a RLF Recipient encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before authorizing work on that site.

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Note: If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subrecipient that DB does not apply.

2. Obtaining Wage Determinations

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subrecipient include the correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

- (i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the "Heavy Construction" Classification.
- (ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. And abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient shall use "Building Construction" classification.
- (iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.
- (iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction" classification.
- (v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Heavy Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with an RLF Recipient, EPA determines that DB applies to a unique situation involving a Brownfields site contaminated with

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petroleum (e.g. unusually extensive excavation) the Agency will advise the Recipient which General wage determination to use based on the nature of the construction activity at the site.

(b) RLF Recipients shall include a term and condition in all loans and subawards which ensures that the borrower or subrecipient complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subrecipient contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the borrower or subrecipient's solicitation remains open, the RLF Recipient shall require that the borrower or subrecipient monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subrecipient amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the RLF Recipient may, on behalf of the borrower or subrecipient, request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the RLF Recipient.
- (ii) If the borrower or subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c) (3) (iv). The RLF Recipient shall ensure that borrowers and subrecipients monitor www.wdol.gov on a weekly basis if the borrower or subrecipient does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF Recipient shall provide the borrower or subrecipient with the current wage determination from www.wdol.gov.
- (iii) If the borrower or subrecipient carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the RLF Recipient shall ensure that the borrower or subrecipient inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) RLF Recipients shall ensure that borrowers and subrecipients review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a borrower or subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or

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ordering instrument. If this occurs, the RLF Recipient shall require that the borrower or subrecipient either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The RLF Recipient must ensure that the borrower or subrecipient compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subaward funds to the borrower or subrecipient for this purpose.

3. Contract and Subcontract Provisions

(a) The RLF Recipient shall ensure that borrowers and subrecipients insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the RLF Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. RLF Recipients shall require that the contractor and subcontractors include the name of

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the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The RLF Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into by borrowers and subrecipients provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve, upon the request of the RLF Recipient an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subrecipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the RLF Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, **and the RLF Recipient and borrower or subrecipient** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the RLF Recipient shall provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. The Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the RLF Recipient take appropriate action to implement the Administrator's determination.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The RLF Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause the borrower or subrecipient to withhold from the contractor under the affected contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or RLF Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the borrower or subrecipient and to the RLF Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the RLF Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the RLF Recipient.

(B) Each payroll submitted to the RLF Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, **Recipient, borrower or recipient**, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), **the RLF Recipient, borrower or subrecipient and EPA**, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. **The RLF Recipient shall ensure that subrecipients and borrowers** insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFF 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) (1) of this section.

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(3) Withholding for unpaid wages and liquidated damages. The RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subrecipient from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the RLF Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the RLF Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

Note: RLF Recipients may require that borrowers or subrecipients verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subrecipients understand the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on borrowers or subrecipients. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subrecipients' contractors and subcontractors comply with DB.

(a) The RLF Recipient periodically interview, or require that borrowers or subrecipients interview, a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a) (6), all interviews must be conducted in confidence. The RLF

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Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The RLF Recipient shall establish and follow, or ensure that borrowers or subrecipients establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient, or the borrower or subrecipient, must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. RLF Recipients, or borrowers or subrecipients, must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subrecipients. All interviews shall be conducted in confidence.

(c) The RLF Recipient shall conduct, or require that borrowers or subrecipients periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The RLF Recipient shall establish and follow or ensure that borrowers or subrecipients follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient must spot check, or require that borrowers or subrecipients spot check, payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. RLF Recipients must conduct, or require that borrowers or subrecipients conduct, more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the RLF Recipient shall verify, or require that borrower or subrecipients verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The RLF Recipient shall periodically review, or require that borrowers or subrecipients periodically review, contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) RLF Recipients must immediately report, or require that borrowers or subrecipients immediately report, potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

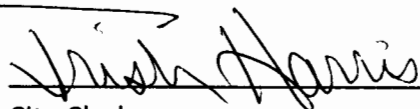
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I, Trish Harris, City Clerk for the City of Somersworth, New Hampshire do hereby certify that:

1. The City Council voted to accept funds and enter into a Subgrant Agreement with the NH Department of Environmental Services on March 20, 2017.
2. The City Council further authorized the City Manager to execute any documents which may be necessary for this Subgrant Agreement;
3. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full forces and effect as of the date hereof; and
4. The following person has been appointment to and now occupies the office indicated in 2 above:

Robert M. Belmore, City Manager

IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of Somersworth, New Hampshire this 21st day of March, 2017.



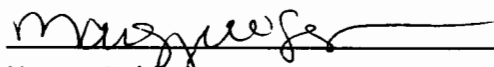
City Clerk

SEAL

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

On this the 21st day of March, 2017 before me, Margaret J. Wagner, Notary Public, the undersigned officer, personally appeared, Trish Harris, who acknowledged herself to be the City Clerk of Somersworth, NH, and that she, as such City Clerk, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have hereunto set my hand and official seal.



Notary Public

Commission Expires:

MARGARET J. WAGNER, Notary Public
State of New Hampshire
My Commission Expires August 26, 2020

RESOLUTION NO. 37-17 TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A GRANT AGREEMENT WITH THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES TO ACCEPT A CLEANUP GRANT AWARD

Somersworth, NH
March 20, 2017

WHEREAS, the City of Somersworth has received notification of a cleanup grant award of \$178,000 (One Hundred and Seventy-Eight Thousand Dollars) from New Hampshire's Brownfields Revolving Loan Fund (RLF) for the purpose of funding a portion of the remediation of the former Breton Cleaners property at 1 Winter Street in Somersworth, and

WHEREAS, the grant funds will be used for the remediation of environmental contamination at the former Breton Cleaners site located at the 1 Winter Street, and

WHEREAS, this grant funded remediation work will include eligible activities such as the abatement by demolition of asbestos and lead-based paint on building structures; the removal of containerized hazardous materials and universal wastes located within the building; and placement of a temporary cap over tetrachloroethylene (PCE) impacted soil,

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOMERSWORTH THAT the City Manager is authorized to execute any documents and agreements necessary for the grant's acceptance and execution, and take any and all other such actions relative to this grant determined to be in the best interest of the City.

Sponsored by Councilors:

David A. Witham
Dale R. Sprague
Martin Pepin
Jennifer G. Soldati
Denis Messier

Approved:

City Attorney

I hereby certify the foregoing to be

~~A TRUE COPY~~

ATTEST:


City Clerk, Somersworth, NH

Council voted on Resolution 37-17
on March 20, 2017. The
Resolution passed unanimously by
a vote of 9-0.

CITY OF SOMERSWORTH
CITY COUNCIL MEETING
SUMMARY FOR MARCH 20, 2017

6:30 P.M. – PUBLIC HEARING – Comcast Franchise Proceedings 7:00 P.M. – CITY COUNCIL MEETING

1. Roll Call of Members
2. Pledge of Allegiance
3. Minutes of Previous Meetings
 - A. MINUTES of the STATE OF THE CITY ADDRESS held on MARCH 6, 2017
Cameron/Paradis, 7-0, Pepin and Soldati abstained.
 - B. MINUTES of the PUBLIC HEARING on ORD 9-17 held on MARCH 6, 2017
Paradis/Cameron, 7-0, Pepin and Soldati abstained.
 - C. MINUTES of the PUBLIC HEARING on ORD 10-17 held on MARCH 6, 2017
Paradis/Messier, 7-0, Pepin and Soldati abstained.
 - D. MINUTES of the CITY COUNCIL MEETING, held on MARCH 6, 2017
Cameron/Paradis, 7-0, Pepin and Soldati abstained.
4. Comments by Visitors
None
5. Announcements by Councilors
None
6. Communications
 - A. Letter from Robert Kraft, owner of the New England Patriots.
7. Presentation of Petitions and Disposal Thereof by Reference or Otherwise
8. Mayor's Report
9. Reports of Standing Committees
Brief reports from Gov Ops and Finance Committee, although they had not met.
10. Reports of Special Committees, City Officers and City Manager
Vision 2020 meeting Thursday.

CM REPORT
PH on ORD 13-17 Scheduled for Apr 3rd @ 6:45, without objection.
PH on ORD 14-17 Scheduled for Apr 3rd @ 6:50, without objection.
11. Nominations, Appointments and Elections
 - A. Planning Board Recommendation - For Council Confirmation Vote.

Scott Orzechowski, as a Commissioner for the Strafford Regional Planning Commission (SRPC), with a term to expire May 2020.
Witham/Cameron, 9-0

12. Lay on Table

- A. Resolution No. 31-17 To Authorize the City Manager to Amend the Renewal Cable Television Franchise Agreement Between the City of Somersworth and Comcast of Maine/New Hampshire, Inc.
Witham removed from the table/Messier. 9-0.
Witham/Messier to approve. 8-1.

13. Unfinished Business

14. New Business

Ordinances

- A. Ordinance No. 13-17 Amending Chapter 19 Zoning Ordinance, Section 30e Hilltop School Property Overlay District
Remain in first read until the April 4 Council Meeting.
- B. Ordinance No. 14-17 Amending Chapter 13 Police Offenses
Remain in first read until the April 4 Council Meeting.

Resolutions

- A. Resolution No. 34-17 To Authorize The City Manager to Contract with Affinity LED Lighting of Dover, NH to Upgrade the Street Lights Throughout the City of Somersworth.
Witham/Paradis waive rules for second read. 9-0
Witham/Paradis to approve. 9-0
- B. Resolution No. 35-17 To Authorize the City Manager to Execute a Group Net Metering Agreement with NH Solar Garden of Portsmouth, NH to Develop a Solar Project Pursuant to RSA 362-A on the Somersworth Sanitary Landfill on Blackwater Road.
Remain in first read until the April 4 Council Meeting.
- C. Resolution No. 36-17 To Authorize the City Manager to Amend the Twenty (20) Year Lease Agreement with the Sober Sisters Recovery by Amending the Lease from Approximately 1.41 Acres to 2.12 Acres of Surrounding Property to the Leased Building (Formerly The Site Of The Malley Farm Boy's Home) Located at 45 Malley Farm Road.
Witham/Cameron. Second Read. 9-0.
Witham/Paradis to approve. 9-0
- D. Resolution No. 37-17 To Authorize he City Manager to Enter into a Grant Agreement with the New Hampshire Department of Environmental Services to Accept a Cleanup Grant Award.

Witham/Paradis, second read. 9-0.
Paradis/Cameron, to approve. 9-0.

15. Comments by Visitors
16. Closing Comments by Council Members
17. Future Agenda Items
18. Nonpublic Session (as necessary, pending roll call vote by Council)
19. Adjournment
Dumont/Cameron @ 8:11

I hereby certify the foregoing to be

A TRUE COPY

ATTEST:


City Clerk, Somersworth, NH



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<i>Participating Member:</i> City of Somersworth One Government Way Somersworth, NH 03878		<i>Member Number:</i> 293	<i>Company Affording Coverage:</i> NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624		
Type of Coverage		Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
<input checked="" type="checkbox"/>	General Liability (Occurrence Form)	7/1/2016	7/1/2017	Each Occurrence	\$ 5,000,000
	Professional Liability (describe)			General Aggregate	\$ 5,000,000
	<input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence			Fire Damage (Any one fire)	
				Med Exp (Any one person)	
	Automobile Liability			Combined Single Limit (Each Accident)	
	Deductible Comp and Coll:			Aggregate	
	<input type="checkbox"/> Any auto				
<input checked="" type="checkbox"/>	Workers' Compensation & Employers' Liability	7/1/2016	7/1/2017	<input checked="" type="checkbox"/> Statutory	\$2,000,000
				Each Accident	\$2,000,000
				Disease – Each Employee	
				Disease – Policy Limit	
	Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	
Description: Proof of Primex Member coverage only. The Participating Member will advise of cancellation/modification of coverage no less than 10 days prior to cancellation.					

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ – NH Public Risk Management Exchange
Department of Environmental Services PO Box 95 Concord, NH 03301			By: <i>Tammy Denver</i>
			Date: 3/21/2017 tdenver@nhprimex.org
			Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax